IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6612 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUBEDABIBI WD/O MOHMAD ISMAIL MUSABHAI PATEL

Versus

OMEX INVESTORS P LTD

Appearance:

1. Special Civil Application No. 6612 of 1990

MR NIGAM R SHUKLA for Petitioner No. 1

MR PM RAVAL for Respondent No. 1-2

MR PJ MEHTA for Respondent No. 2

MR BB NAIK for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 29/11/2002

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of the Constitution the petitioner has prayed to issue an appropriate writ or direction to quash and set aside order dated November 15, 1989 passed by the Regional Provident Fund Commissioner by which the claim made by the petitioner to pay her a sum of Rs. 10,000/- on the death of her husband who was a member of the Provident Fund Scheme, has been rejected. The petitioner has further prayed to direct the Regional Provident Fund Commissioner to pay to the petitioner a sum of Rs. 10,000/- as a benefit accruing to her under the Employees' Deposit Linked Insurance Scheme with 15 per cent interest from the date of making of the application till realization.

2. The petitioner is wife of deceased Mohmad Ismailbhai Musabhai Patel. The deceased was employed with the respondent no. 1 - Company. The respondent no. 1 - Company has long back closed down its operations. The husband of the petitioner expired on June 2, 1989 and at that time he was a member of Employees' Deposit Linked Insurance Scheme. According to the petitioner her husband had a sum of Rs. 14,650/- to his credit as provident fund and the said amount was paid to her on October 6, 1989. What is claimed by the petitioner is that under the provisions of Employees' Deposit Linked Insurance Scheme in case of death of an employee who is a member of the Employees' Provident Fund Scheme the legal heirs would be entitled to insurance benefit of Rs. 10,000/- under the provisions of Employees' Deposit Linked Insurance Scheme and therefore, she is entitled to get the said sum. The petitioner made an application before the Regional Provident Fund Commissioner, Gujarat State, Ahmedabad requesting to pay her the sum of Rs. 10,000/-, but the claim has been rejected by the respondent no. 2 on the ground that the deceased had already withdrawn Rs. 40,650/- which was the total accumulation in his provident fund account and, therefore, the petitioner is not entitled to the sum of Rs. 10,000/- claimed by her. The grievance made by the petitioner in the present petition is that the husband of the petitioner had died four months before the payment of provident fund accumulation to the petitioner by the respondent no. 2 and therefore, the respondent no. 2 was not justified in dismissing the claim of the petitioner on the basis that the husband of the petitioner had already withdrawn Rs. 40,650/- which was the total accumulation to his credit in his provident fund account. Under the circumstances the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice Mr. M H Shukla, Assistant Provident Fund Commissioner (Legal) has filed reply affidavit controverting the averments made in the petition. What is stated in the reply is that the deceased who was employed in the respondent no. 1 Company was a member of Employees' Provident Fund Scheme as well as Employees' Deposit Linked Insurance Scheme and had, by submitting necessary forms nos. 10 and 19 withdrawn the whole amount of provident fund standing to his credit on September 20, 1987, and therefore, it is not correct to say that the amount of Rs. 40,660/- standing to the credit of the deceased employee was paid to the petitioner on October 6, 1989 as claimed by the petitioner. It is further stated in the reply that on withdrawal of the amount of Rs. 40,660/- the deceased ceased to be a member of Employees' Provident Fund Scheme and therefore, the petitioner is not entitled to the relief claimed in the petition. What is averred in the reply is that the deceased had died not in harness but after completion of services and therefore, as per the provisions of Employees' Deposit Linked Insurance Scheme the petitioner would not be entitled to receive a sum of Rs. 10,000/as claimed by her. Thus the deponent of the reply affidavit has demanded dismissal of the petition.

4. I have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. It may be stated that the petitioner has not controverted the averments made by Mr. M H Shukla, Assistant Provident Fund Commissioner (Legal) in his affidavit-in-reply. From the particulars which are supplied in the affidavit-in-reply it is evident that the deceased had himself had, during his life time, submitted forms nos. 10 and 19 and withdrawn a sum of Rs. 40,660/- from his Provident Fund and FPF account on September 20, 1987. The claim made by the petitioner that the said sum was paid to her on October 6, 1989 is not borne out from the record of the case. On withdrawal of the sum of Rs. 40,660/-, the deceased ceased to be a member of the Employees' Provident Fund Scheme and therefore in terms of the provisions of Employees' Deposit Linked Insurance Scheme the petitioner would not be entitled to receive the sum which is claimed by her in the instant petition. In fact, after September 20, 1987 the deceased had not maintained average balance in the fund sponsored under the Employees' Deposit Linked Insurance Scheme or Provident Fund and therefore, in terms of Para 22 of the Employees' Deposit Linked Insurance Scheme, 1976 the petitioner would not be entitled to receive the sum of Rs. 10,000/-. Under

these circumstances the Court is of the opinion that the petition is misconceived and liable to be dismissed.

5. For the foregoing reasons the petition fails and is dismissed. Rule is discharged. There shall be no orders as to costs.

(J. M. Panchal, J.)

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